

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Rota *et al.*

Application No. 10/822,904

Filed: April 12, 2004

Confirmation No. 7102

For: NOVEL CORONAVIRUS ISOLATED
FROM HUMANS

Examiner: Mary E. Mosher

Art Unit: 1648

Attorney Reference No. 6395-67788-01

DECLARATION OF PAUL A. ROTA UNDER 37 C.F.R. §1.132

I, Paul A. Rota, declare that:

1. I am a co-inventor (together with others) named in the above-identified application with amendments through the Amendment and Response to Non Final Office Action, mailed to the U.S. Patent and Trademark Office ("USPTO") on March 6, 2006, and am a co-inventor of the subject matter described and claimed in such application.

2. I understand that the following single claim presently is under examination in the application:

An isolated nucleic acid molecule consisting of the nucleotide sequence as set forth in SEQ ID NO: 1.

I further understand that SEQ ID NO: 1 shows a nucleic acid sequence of the SARS coronavirus (SARS-CoV), Urbani strain genome.

3. I further understand the claim set forth in paragraph 2 above has been rejected by the USPTO under 35 U.S.C. §102(e) as being allegedly anticipated by Figure 501 of Rappuoli *et al.*, PCT Publication No. WO2004/092360, and that the USPTO has given Figure 501 priority to the April 14, 2003 filing date of U.S. Provisional Application No. 60/463,109 (to which PCT Publication No. WO 2004/092360 claims priority).

4. I have examined Figure 501 of U.S. Provisional Application No. 60/463,109. I also have reviewed the statement by Rappuoli *et al.* acknowledging that “[t]he Centers for Disease Control . . . published on their website (<http://www.cdc.gov/ncidod/sars/pdf/nucleoseq.pdf>) a nucleotide sequence of a SARS-CoV strain (attached as FIGURE 501)” (see, *e.g.*, page 2 of U.S. Provisional Application No. 60/463,109).

5. I and several of my co-inventors uploaded SEQ ID NO: 1 to the CDC website on or before April 14, 2003. Figure 501 of U.S. Provisional Application No. 60/463,109 shows SEQ ID NO: 1 as uploaded to the CDC website by us. U.S. Provisional Application No. 60/463,109 expressly states that the sequence in its Figure 501 was obtained from the CDC website. Therefore, the information in Figure 501 of U.S. Provisional Application No. 60/463,109 originated from our work.

6. The sequence uploaded to the CDC website lists me and the following people as “AUTHORS”: Bellini, W.J., Campagnoli, R.P., Icenogle, J.P., Monroe, S.S., Nix, W.A., Oberste, M.S., and Pallansch, M.A. Each of the AUTHORS is listed as an inventor on the application and signed the declaration of inventorship prescribed by 37 C.F.R. §1.63, which declaration was mailed to the USPTO on November 17, 2004.

7. In addition to the AUTHORS discussed in paragraph 6, Larry J. Anderson, Cara Burns, Qi Chen, James A. Comer, Shannon Emery, Dean D. Erdman, Cynthia Goldsmith, Charles D. Humphrey, Thomas G. Ksiazek, Teresa C.T. Peret, Pierre E. Rollin, Anthony Sanchez, Suxiang Tong, and Sherif R. Zaki also are listed as inventors on the application (collectively, “NON-AUTHORS”). Each of the NON-AUTHORS signed the declaration of inventorship prescribed by 37 C.F.R. §1.63, which declaration was mailed to the USPTO on November 17, 2004.

8. The AUTHORS uploaded SEQ ID NO: 1 to the CDC website on behalf of each of the inventors listed above in paragraphs 6 and 7. Thus, SEQ ID NO: 1 as published on the CDC website describes the work of each of the AUTHOR and NON-AUTHOR inventors.

9. All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any patent issuing therefrom.

9/18/06
Date

Paul A. Rota
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